

**MINUTES**  
**Montana Fish, Wildlife & Parks Commission Meeting**  
**1420 East 6<sup>th</sup> Avenue – Helena Headquarters**  
**Helena, MT 59620**  
**MARCH 29, 2007**

**Commission Members Present:** Steve Doherty, Chairman; Shane Colton (via teleconference) ; Vic Workman; Dan Vermillion; Willie Doll.

**Fish, Wildlife & Parks Staff Present:** Larry Peterman, Chief of Field Operations, and FWP Staff.

**Guests:** See March 29, 2007 Commission file folder for those who signed in.

A Work Session preceded this meeting to discuss Hunter Participation and Recruitment, Youth Pheasant Hunting Opportunities, an Energy Update, and a Legislative Update.

**Topics of Discussion:**

- 1. Opening - Pledge of Allegiance**
- 2. Approval of February 13, 2007 Commission Meeting Minutes**
- 3. Approval of February, 2007 Commission Expenses**
- 4. Keep Cool Hills Management Area near Lincoln (Sieben Ranch) Biennial Rule – Final**
- 5. Dog Training Permits – Informational**
- 6. Makoshika State Park Rifle Range Relocation Acquisition near Glendive – Final**
- 7. Bird Creek Ranch Conservation Easement – Final**
- 8. Future Fisheries Projects, January 2007 Funding Cycle – Final**
- 9. Canyon Ferry Reservoir & Lake Helena Commercial Fishing Regulations – Final**
- 10. Glendive Chamber of Commerce and Agriculture Paddlefish Roe Committee Appointments – Final**
- 11. Scotty Brown Bridge Land Exchange Update – Informational**
- 12. Kona Bridge FAS – Final**
- 13. Authority to Stock Tiger Muskie in Horseshoe, Gartside, Ross, Cow Creek and Little Warm Reservoirs – Tentative**
- 14. Open Microphone – Public Opportunity to Address Additional FWP Issues**

**1. Opening - Pledge of Allegiance.** Chairman Doherty called the meeting to order at 1:00 p.m. and led the Pledge of Allegiance.

**2. Approval of February 13, 2007 Commission Meeting Minutes.**

*Action: Workman moved and Vermillion seconded the motion to approve the minutes of the February 13, 2007 Commission meeting. Motion carried.*

**3. Approval of February, 2007 Commission Expenses.**

*Action: Vermillion moved and Doll seconded the motion to approve the Commission expenses as presented. Motion carried.*



**4. Keep Cool Hills Management Area near Lincoln (Sieben Ranch) Biennial Rule – Final.** Alan Charles, FWP Landowner Sportsman Coordinator, stated that there were no changes to the tentatives. This rule would provide managed public access to a Cooperative Management Area comprised of approximately 15,000 acres of land north of Lincoln. The majority of this land is private land owned by the Sieben Ranch Company, with some parcels owned by the Montana Nature Conservancy, Inc. and Montana Department of Natural Resources and Conservation.

No public comment was received, and the parties involved are satisfied with the rule as written. The effective dates of the rule will be March 29, 2007 through March 28, 2009, if approved by the Commission.

*Action: Doll moved and Workman seconded the motion to approve the Keep Cool Hills Hunting Access and Recreation Management Area Biennial Rule. Motion carried.*

**5. Dog Training Permits – Informational.** Tim Feldner, FWP Wildlife Permitting Manager, explained that FWP issues free permits to individuals who wish to go to licensed game bird farms and purchase captive-reared birds for use in training dogs to hunt. The permits require identification of the training location, restrict shooting of the captive-reared birds to the permit holder, and are valid only for training dogs owned by the permittee. Permits are valid from January 1 through December 31. The terms of the permits are on the permit itself.

Originally, the permit was for owners who wanted to get their dogs in shape or to train a young pup. Now there are competitive trainers, commercial trainers, and out-of-state trainers who come to Montana with multiple dogs. Those individuals are feeling constrained by the current dog training permit policy.

FWP is not opposed to dog training, however regulations need to be established to address this activity. Commercialization needs to be controlled, and a maximum numbers of birds per permit needs to be determined that would allow both private and competitive training. Approximately 100 dog training permits were issued last year, and people requested anywhere from 10 to over 200 birds. Continuing in this manner could result in significant biological impacts.

Feldner cited an example of one individual that had four permits on his property and each permit was for 450 birds. That creates potential enforcement issues. The only person who can legally shoot is the one with the permit. To hand out free permits to people who may take commercial advantage could cause problems in the future. Now is the time to address it. Wyoming limits their permits to 100 birds, and does not allow the use of birds that are the same species as those in upland game season.

The concern is that allowing multiple gunners to shoot over dogs they do not own may allow individuals to, in effect, operate shooting preserves under the free dog-training permit. Currently, there are more than 90 shooting preserves that purchase licenses from FWP allowing upland bird shooting of captive reared birds between September 1 and March 31. These licensees charge individuals to shoot upland birds on their property.



Feldner said FWP wants to assure there is no abuse, and regulations need to be established for enforcement issues. Birds will need to be marked to assure they are captive birds and not wild birds. Regulations and guidelines will be brought before the Commission in May in the form of tentative Administrative Rules.

John Ride from the Gallatin Valley said training dogs with pen-raised birds is a small but important part of training a gun dog. He said rather than nickel and dime legal trainers, to include legal wording such as “allows to purchase... but does not allow commercialization.”

Jim McCreedy, Golden Triangle Sporting Dog Club, said shooting over your own dog makes training inefficient and dangerous. Presently the regulations are ignored, and many people don’t even get a dog-training permit.

Rob Walker, Montana State Houndsmen Association, said his group implemented hound training permits where the fee goes to FWP. It’s a \$5 fee for chasing lions and bobcats.

**6. Makoshika State Park Rifle Range Relocation Acquisition near Glendive – Final. Joe Maurier, FWP Parks Division Administrator,** stated that in 2005, the Makoshika Management Plan was developed, and from that plan, a recommendation was made to move the rifle range out of Makoshika State Park. The community was assured that the existing range would remain open until a new site was located. Subsequent to the Commission’s approval in July, 2006, FWP pursued negotiations with the Department of Natural Resources and Conservation for the acquisition of a 357-acre parcel of land five miles west of Glendive for the purpose of relocating the rifle range to that site.

The cost of the easement is \$130,000. FWP has the surface rights, but DNRC retained the mineral rights. The Environmental Assessment generated four comments – three in support of the acquisition, and one in opposition due to history he has had with FWP.

*Action: Colton moved and Doll seconded the motion to approve the Department’s acquisition of the identified parcel of DNRC land, via permanent recreational easement, for the future development of a public shooting range near Glendive. Motion carried.*

**7. Bird Creek Ranch Conservation Easement – Final. Ken McDonald, FWP Wildlife Division Administrator,** explained that the 2,292-acre Bird Creek Ranch, located 4 miles downstream from Cascade, provides riparian, forested wetlands, shrub, and native grassland vital to many wildlife species, including deer, antelope, upland game birds, waterfowl and numerous non-game wildlife species. The owner wants to provide wildlife habitat while at the same time utilizing the property as a working ranch for cattle, sheep and hay. The Landowners currently allow hunting for big game, waterfowl and upland game birds.

FWP will use \$550,000 of Habitat Montana funds. Additional funding sources will include the NRCS Farm and Ranch Protection Program (\$398,000), PPL Montana (\$50,000), and the landowner donation (\$50,000 - \$102,000).



This easement will protect important riparian/wetland habitats along the Bird Creek drainage, and will provide public access in perpetuity on Bird Creek Ranch. The Environmental Assessment generated comments of overwhelming support for the proposal.

*Action: Doherty moved and Vermillion seconded the motion to approve the Department's recommendation to purchase a conservation easement from the Bird Creek Ranch.*

*Discussion on Motion:* Doll stated he is against easements in perpetuity, he feels a time limit is a better option. He said technology drastically changes over time, as does everything. You don't know what may happen in the future, and perpetuity ties the land up forever.

McDonald said that FWP views easements just the opposite – that perpetuity guarantees habitat protection.

Chairman Doherty asked for public comment.

Larry Copenhaver, Montana Wildlife Federation, expressed support for the proposal and gratitude for the selection of Habitat Montana for the funding source.

Robert Sanders, Ducks Unlimited, stated that he had visited the site, and from a biological perspective it is the best of the best. He stated this proposal is an excellent example of multi-agency and landowner collaboration. Sanders said as far as perpetuity vs non-perpetuity, there is risk in short-term easements in that when the term expires, the site may be priced out of range and lost to development. He encouraged approving this proposal.

Peterman said FWP is required by law (HB5) to offer the option of a lease, and in this case the owners were not interested in a short-term lease.

*Action on Motion. Motion carried. Four in favor – one opposed (Doll).*

**8. Future Fisheries Projects, January 2007 Funding Cycle – Final. Chris Hunter, FWP Fisheries Division Administrator,** explained that the Future Fisheries Program is a grant program that is administered by FWP to benefit wild fish populations. Project applications are reviewed twice a year by a citizen panel who then submits their recommendations to the Commission for funding approval. The panel is recommending twenty-three projects totaling \$645,976 for the January 2007 funding cycle.

**Glenn Phillips, FWP Fisheries Habitat Bureau Chief,** said every two years FWP compiles a future fisheries project report that summarizes the programs that have been funded. He then asked the Commission if they wanted copies of the whole package of applications or just those from their specific districts. Doll, Workman, Doherty, and Vermillion would like to receive all of the applications, and Colton asked for just his district.

*Action: Workman moved and Vermillion seconded the motion to approve the Future Fisheries Projects as recommended by the Future Fisheries Review Panel.*



Chairman Doherty asked for public comment. There was none.

*Action on Motion: Motion carried.*

**9. Canyon Ferry Reservoir & Lake Helena Commercial Fishing Regulations – Final. Chris Hunter, FWP Fisheries Division Administrator,** explained that the Commission has statutory authority to approve one permit for one commercial fishing operation in each body of water in Montana, and to establish necessary regulations for each. The last several years Richard and Donna Greene have applied for, and received, a permit to harvest carp in Canyon Ferry and Lake Helena. (Greene did not fish last year). There are conditions attached to the permit to protect nesting birds, to protect spawning walleye, and to accommodate anglers and recreation. No public comments were received on the Environmental Assessment.

*Action: Workman moved and Doll seconded the motion to approve the regulations for commercial fishing on Canyon Ferry Reservoir and Lake Helena for 2007 as proposed.*

Doherty asked for public comment. There was none.

*Action on Motion: Motion carried.*

**10. Glendive Chamber of Commerce and Agriculture Paddlefish Roe Committee Appointments – Final. Chris Hunter, FWP Fisheries Division Administrator,** explained that Montana statute authorizes one non-profit organization to collect, process, and sell paddlefish roe each year. Historically, the Glendive Chamber has been the selected organization. A committee appointed by the organization is responsible for soliciting proposals for historical, cultural, recreational, fish and wildlife activities, and for making funding recommendations. Those committee members must be approved by the Commission each year. There are no changes from last year. Hunter added that the recommended members have been on the committee for a number of years.

*Action: Vermillion moved and Workman seconded the motion to approve the Paddlefish Roe Program Advisory Committee as recommended by the Glendive Chamber of Commerce and Agriculture and to direct the department to enter into an MOU with the Chamber for the 2007 paddlefish season*

Doherty asked for public comment. There was none.

*Action on Motion: Motion carried.*

**11. Scotty Brown Bridge Land Exchange Update – Informational. Mack Long, FWP Region 2 Supervisor,** explained that this project has been in progress for quite some time, and since it is nearly time for the final decision to be made, the Region wanted to show the new Commission what the project is about. Long narrated a Power Point presentation of the proposal.

Prior to the early 1990's when Powell County realigned the bridge, the original bridge site provided access to the Blackfoot River. Since the realignment, there has been controversy over public access to the river. The landowners at the new site were concerned with public use, however they conceded to provide walk-in access between two sets of fences - no boat launching was allowed.



In August of 2002, one of the landowners and FWP worked out an agreement to remove one side of the fence to allow floating and boating access as well as walk-in access. FWP also took over site management as one term of the agreement, and would like to make permanent arrangements for limited day use.

The proposal is for FWP to exchange 7.15 acres of Department-owned land in Powell County that bisects the private landowner's property, for a 3-acre tract of land at the new bridge. In addition to working with the landowner, FWP will coordinate with Powell County regarding the right-of-way, and with the Nature Conservancy regarding their conservation easement on the land. Once acquired, FWP would develop a 4-stall parking area and a hand-boat launch ramp.

There has been a great deal of pressure on FWP and Powell County to resolve this access issue.

When asked if parking opportunities could be expanded, Long replied that FWP and the landowner had negotiated an agreement of a maximum of six parking stalls. He added that the local sports groups are supportive of this project as well.

*Action: Workman moved and Doll seconded the motion to move forward with the proposed land exchange. Motion carried.*

**12. Kona Bridge FAS – Final. Chris Hunter, FWP Fisheries Division Administrator,** explained that this proposed 2 ½-acre fishing access site, owned by Missoula County, is located along the Clark Fork River downstream from Missoula. The county would retain ownership, but FWP would manage the site. Site developments, which will include a paved interior road and parking area, concrete boat ramp, latrine, fencing and signage, will be jointly funded by Missoula County and FWP. This section of river receives a great deal of use, ranking 6<sup>th</sup> in the state for the number of angler days it provides.

The term of the lease will be for ten years with a ten-year renewal. FWP is interested in leasing and developing this site to protect the river banks and to disperse fishing pressure along the river. The Environmental Assessment generated four comments in favor and two in opposition.

*Action: Workman moved and Vermillion seconded the motion to approve the lease of the Kona Bridge site from Missoula County for development as a fishing access site.*

Chairman Doherty asked for public comment. There was none.

*Action on Motion: Motion carried.*

**13. Authority to Stock Tiger Muskie in Horseshoe, Gartside, Ross, Cow Creek and Little Warm Reservoirs – Tentative. Chris Hunter, FWP Fisheries Division Administrator,** explained that FWP is seeking Commission approval to stock Tiger Muskie in Horseshoe, Gartside, Ross, Cow Creek and Little Warm Reservoirs. Tiger Muskies are not included in either the statute or the rule that stipulates which fish can be stocked without Commission approval, therefore the request needs to be brought before the Commission. FWP is in the process of updating the rule to include the Tiger Muskie on the list, and to remove any species that no longer needs to be on the list.



Doll indicated that he is aware of a landowner who only allows his personal friends to fish in a pond stocked by FWP. Hunter stated that he will follow up on this as FWP will not stock fisheries if the public cannot fish in them.

*Action: Vermillion moved and Workman seconded the motion to approve stocking of Tiger Muskie into Horseshoe, Gartside, Ross, Cow Creek and Little Warm Reservoirs with the assurance that the general public has access to these fisheries.*

*Discussion on Motion:* Peterman stated that if public funds are used for stocking, public access must be allowed, and that access must be non-discriminatory. However if a site becomes overrun, the number of people can be limited. He added that FWP does monitor stocked ponds.

Doll said he wants to establish a kids fishing pond on his land, but only for kids, not the general public. Peterman and Hunter responded that FWP has established kids fishing ponds in the past with age limitations attached.

*Action on Motion: Motion carried.*

~~~~

Workman said he heard that the courts have determined that the Westslope Cutthroat will not be placed on the endangered species list, and that they also accepted the USFWS recommendation that 80% hybrid be considered pure. Hunter said he has not seen the decision, but he does understand that to be true. Workman asked if that will influence the plans to poison the 23 lakes in the South Fork drainage in Region 1. Hunter said a discussion will need to be held on what that decision means and what impact it will have on that project. Workman said the majority of people in his region who have contacted him do not want to see the lakes poisoned. If an 80% hybrid is still a cutthroat, then a new study needs to be done on how much hybridization has happened. Doherty suggested directing the Department to come back to the April meeting with the legal decision and what it means to FWP and the project.

Workman asked the Department to get the legal decision and come back to the next Commission meeting with the information.

~~~~

Peterman said there are committee assignments that need to be filled by members of the Commission. Workman is presently serving on the Alternative Livestock Committee, and he stated he would like to retain that position. The Variable Priced Licensing Committee needs a representative to replace John Brenden, and TIPMONT needs a replacement for Tim Mulligan. Colton currently serves on the Private Land/Public Wildlife Committee, however with his involvement in the bison situation and the amount of time the PLPW meetings take, he would prefer to remove himself from that committee to take a position on the Variable Priced Licensing Committee.

*Action: Workman moved and Doll seconded the motion for the following committee assignments:*

*Workman – Alternative Livestock Committee*

*Vermillion – Private Land Public Wildlife*

*Doll – TIPMONT*

*Colton – Variable Priced Licensing,*

*Doherty – FWP Foundation*

*Motion carried.*



**Larry Peterman, FWP Chief of Field Operations**, stated that FWP has just received written notice from the Shoshone-Bannock Tribes in Idaho and the Confederated Tribes of the Colville Reservation (Nez Perce) in Washington indicating their intention to come to Montana to hunt bison in the Yellowstone Park area under treaty rights. FWP immediately prepared, and sent, written responses to the tribes informing them that FWP is unaware of any authority by which they have off-reservation hunting rights in Montana, and requested that they provide the basis for their claims, including legal analysis, treaty language, and historical use documentation. FWP is now awaiting a reply from the Tribes. Peterman said FWP feels strongly that they do not have a basis in law for any rights to hunt bison under treaty rights free from state regulations.

Peterman said thirty-one bison were harvested of the 140 hunting licenses that were issued through the regular state license process. Additionally, the Nez Perce Tribe harvested 27 bison, and at least two elk, however reports to the Department have indicated that they took additional elk. Director Hagener sent a letter to the Nez Perce Tribe notifying them that the two agencies need to communicate soon to address all issues before any future hunts are undertaken.

Workman felt the Commission should direct FWP staff to begin work on developing tribal hunting regulations, directed toward the Nez Perce Tribe, wherein FWP would tell them when they can hunt, where they can hunt, what they can hunt, and for what duration of time they can hunt. He recommended they be included in the regular permitting process for drawings, and allowed to hunt bison only in specific areas. FWP and the Commission do recognize their treaty rights, but they need to recognize that the State of Montana's FWP is managing the wildlife, and they must work with FWP to come to an agreement that they can hunt only 20 bison in-season in cooperation with other hunters. If they cannot work with FWP, they must be informed that they are breaking laws and fines will be imposed, to include the confiscation of firearms and vehicles. He said we must be proactive rather than wait and hope they will get back to us, because they have historically failed to do so.

Colton said it would be difficult to impose hunting regulations on the Tribes when the 2007-2008 season regulations have not yet been determined. In fact, it has not been determined if a season will even be offered. Colton said all tribal claims to hunting rights will need to be considered when recommendations are made for a bison season. Given what happened with the Nez Perce this last season, it will be difficult to approve a season again. He is not going to support a bison season that is of no advantage to Montana hunters.

Colton directed FWP to take into consideration the harvest by the Nez Perce, and the claims of the other tribes, when they make recommendations for the 2007-2008 bison season and the late season elk hunt.

Doherty said since the Department knows what the Tribes' rights are as far as federal law goes, it must be determined how far the State can regulate them. The Department needs to know what the Attorney General's opinions translate to, and how far that authority can successfully be pushed. Then FWP must get aggressive about the meetings with the tribe.

Colton suggested that a coordinated effort between the FWP Legal Unit and the Attorney General's Office mandate that if the Commission does not authorize a hunt, then that applies across the board to everyone. There will be no harvest.



Workman asked if the Tribes can still hunt even if a hunt is not authorized by FWP.

Colton and Doherty said that needs clarified, but they felt the tribes could not.

Colton said that although he is supportive of what Workman suggests, the Commission does not want to make regulations that have no validity. He said “we need to reengage in the discussion and understand more fully what control we have over what goes on”, and it needs to be done soon. The Department needs to find out what can be done, since it has been ignored for several months by the tribe, and then decide what can be done to enforce the issue.

Doherty said the Confederated Salish & Kootenai Tribes are a totally different issue – they work with FWP.

Colton said it was his understanding that no decisions have been made by the Department pending any violations against Nez Perce tribal members. The Commission needs information on the status of the investigations of those violations.

Workman said there is a problem and we need to be proactive or it will “bite us” again. He feels the Attorney General’s opinions are biased in favor of the tribes. He challenged the Commissioners to find a reservation where there is any wildlife left on it.

Colton said the Commission needs more background and a better understanding of what the Department’s rights are. FWP Legal staff and the Attorney General’s office must coordinate on this effort. A meeting with the Nez Perce has been scheduled for May, therefore this topic needs to be a priority agenda item at the April meeting.

Doherty agreed, saying discussions should include our regulations, their regulations, how far our authority runs before theirs begins, etc. The Department needs to determine what can be done if the Nez Perce don’t cooperate. The Confederated Salish & Kootenai Tribe needs to be involved too, as they will have a different response than the Nez Perce.

Peterman reiterated some of the issues the Commission would like researched for discussion at the April Commission meeting.

- Citations pending against Nez Perce tribal members

- How far can FWP go in regulating harvest

- Clarification on whether or not cessation of a bison season in Montana would stop tribal harvest

- What can be done if the tribe continues to ignore the Department

Colton said it is entirely possible that the scope of the Environmental Assessment has been exceeded by the hunting. It is our obligation to work within the parameters of the EA, and that may not have been done because the Nez Perce Tribe would not cooperate with FWP. It will cause serious problems if we cannot operate within the EA because of tribal hunting.

Doherty said that the EA on bison hunting did not take into consideration that other entities would be harvesting them.



~~

Workman questioned the rules governing State Parks that allow the removal of some items from the parks, but not other items. He asked why removing antler sheds was not permitted. He would like to see the rules changed and coordinated with WMAs as he does not see why folks can't take antlers from the parks. He said people do it anyway, so it would legalize something that is already happening.

Doherty asked Maurier to provide information at the next Commission meeting regarding the rationale for not allowing the removal of antler sheds from State Parks.

Bob Gilbert, past Director of Walleyes Unlimited of Montana, suggested that FWP use a signed agreement with the landowners that defines the general public "as anyone with a fishing license" and allows the public to fish in private ponds stocked with public fish.

**14. Open Microphone – Public Opportunity to Address Additional FWP Issues.** None.

*Action: Workman moved and Vermillion seconded the motion to adjourn the meeting. Motion carried.*

Meeting adjourned at 3:15 p.m.

---

**Steve Doherty, Chairman**

---

**M. Jeff Hagener, Director**